

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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MAY 21 1997

Federal Communications Commission
Office of Secretary

In the Matter of)

Administration of the)

North American Numbering Plan)

Carrier Identification Codes ("CICs"))

CC Docket No. 92-237

**MOTION IN SUPPORT OF
VARTEC TELECOM, INC.'S
EMERGENCY MOTION FOR STAY
AND
PETITION FOR RECONSIDERATION**

America's Carriers Telecommunication Association ("ACTA")¹ hereby supports VarTec Telecom, Inc.'s ("VarTec") Emergency Motion for Stay and Petition for Review filed on May 19, 1997 in regard to the Commission's Second Report and Order ("Report and Order") in CC Docket No. 92-237.²

First, ACTA supports VarTec's Emergency Motion for Stay because its request meets the four requirements for the issuance of such a stay: 1) a strong likelihood exists that VarTec will prevail on the merits because the Commission's action was arbitrary and capricious and contrary to the stated reasoning underpinning the rulemaking³; 2) if a stay is not granted, the loss to VarTec, and

¹ ACTA is a national trade association of over 200 telecommunications service providers, many of which are interexchange carriers ("IXCs") that have CICs and rely on the usage of CICs by end users for substantial portions of their revenue.

² Second Report and Order, 62 Fed. Reg. 19,056 (April 18, 1997).

³ Additionally, as argued in VarTec's pleadings, VarTec is likely to establish that the Commission's Report and Order constitutes an infringement of carriers' rights under the First and Fifth Amendments to the U.S. Constitution and violates the Regulatory Flexibility Act, 5 U.S.C. § 603 et seq. ("RFA"), and Section 257 of the Communications Act, 47 U.S.C. § 257.

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all carriers that rely on the usage of CICs by their end users, will be great, irreparable and certain to occur as VarTec, and similarly situated carriers, will lose the goodwill they developed through CICs as well as their rights under the First Amendment; 3) adequate compensatory or other corrective relief will be unavailable at a later date because VarTec, and similarly situated IXCs, already will have lost their goodwill and customer base and no truly effective means exists to salvage such goodwill or customer base; and 4) the requested stay will not substantially harm any other party and will serve the public interest by maximizing the number of CICs available to consumers who might otherwise be confused and unable to use their "dial-around" carrier(s) of choice.


Second, ACTA supports VarTec's Petition for Reconsideration filed simultaneously with the Emergency Motion for Stay for the following reasons: 1) the Report and Order is arbitrary and capricious under the Administrative Procedures Act, 5 U.S.C. §§ 551-559 ("APA") because its refusal to grandfather five-digit CICs and force an unconscionable transition period on all members of the IXC industry undermines rather than furthers the Commission's ostensible goal of promoting new services and technologies to support continued economic growth;⁴ 2) the Report and Order violates the Fifth Amendment of the United States Constitution by depriving VarTec, and similarly situated carriers, of their property interests in their five-digit CICs (which are their service marks) without just compensation; 3) the Report and Order also violates VarTec's, and similarly situated carriers', First Amendment rights to freedom of commercial speech by not creating alternative regulations that advance the government's interest in this proceeding while avoiding an infringement

⁴ Also, implementation of the Report and Order will cause customer confusion and decreased revenues for dial-around IXCs, produce fewer CICs to assign to new services and carriers and result in less, not more, competition in the long distance arena.

of commercial speech rights; and 4) the Report and Order violates the Communications Act and the RFA by creating market entry barriers for small businesses.⁵

In short, the Commission has attempted to create a policy that flies in the face of the intent of Congress by not protecting consumers or promoting competition, and endangers the viability of smaller carriers, thus undermining competition. For the reasons stated above, ACTA supports VarTec in its Emergency Motion for Stay and Petition for Reconsideration.

Respectfully submitted,
AMERICA'S CARRIERS
TELECOMMUNICATION ASSOCIATION

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⁵ In the Report and Order, the Commission required small IXCs to bear the overwhelming cost of consumer education rather than the large LECs, the main beneficiaries of the Commission's action. Additionally, the Commission did not require the LECs to provide a competitively neutral intercept message. Both omissions violate the RFA. Also, the Report and Order violates Section 257 of the Communications Act by erecting, not eliminating, market entry barriers for small businesses by increasing IXCs' costs of educating their customers and reducing their revenues through end users lost due to confusion.

CERTIFICATE OF SERVICE

I, Michele Grasse, a secretary in the law office of Helein & Associates, P.C., do hereby state and affirm that copies of the foregoing "Motion in Support of VarTec Telecom, Inc.'s Emergency Motion for Stay and Petition for Reconsideration" were served via hand delivery or facsimile, this 21st day of May, 1997, on the following:

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